

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

KRISTOFER K. ONDREJKA,

Plaintiff,

v.

Case No. 14-CV-999

**RACINE CORRECTIONAL INSTITUTION,
NP LORA BLASIUS, RN SUSAN NYGREN,
and WARDEN KEMPER,**

Defendants.

DECISION AND ORDER

Plaintiff Kristofer K. Ondrejka, who is proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 along with a petition to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. By order dated October 2, 2014, plaintiff was granted an extension of time until November 3, 2014, to forward to the Clerk of Court the sum of \$11.79 as an initial partial filing fee in this action. To date plaintiff has not paid this partial filing fee. From this failure to pay the initial filing fee this court infers that plaintiff no longer wants to prosecute this action.

However, before dismissing this case for failure to pay the initial fee, the court must determine whether the prisoner is at fault for the non-payment. See Thomas v. Butts, 745 F.3d 309, 312-13 (7th Cir. 2014). A court may not dismiss the suit of a prisoner who has a lack of funds in the account. Id. at 312; see also 28 U.S.C. § 1915(b)(4) (“In no event shall a prisoner be prohibited from bringing a civil action . . . for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.”). “But if the court finds that the prisoner is unable to pay the partial filing fee at the time of collection because

he intentionally depleted his account to avoid payment, the court in its sound discretion may dismiss the action.” Thomas, 745 F.3d at 312 (citations and internal quotation omitted).

NOW, THEREFORE, IT IS ORDERED that the plaintiff shall show cause why this case should not be dismissed for nonpayment of the initial partial filing fee.

IT IS FURTHER ORDERED that on or before **December 8, 2014**, plaintiff shall provide the court with information regarding why the initial partial filing fee has not been paid.

IT IS ALSO ORDERED that a copy of this order be sent to the warden of the institution where the inmate is confined.

Dated at Milwaukee, Wisconsin, this 17th day of November, 2014.

s/ Lynn Adelman

LYNN ADELMAN
District Judge